

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVID JOHNSON

APPELLANT,

v.

**LAND AIR EXPRESS, INC., FRANKLIN TRUCKING CO., AND TREASURER OF THE
STATE OF MISSOURI - CUSTODIAN OF THE SECOND INJURY FUND
RESPONDENTS.**

**DOCKET NUMBER WD74821
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 26, 2012

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division One: James M. Smart, Jr., P.J., Lisa White Hardwick and Gary D. Witt, JJ.

Attorneys:

Keith V. Yarwood, Kansas City, MO, for Appellant.

**Jeffrey D. Slattery, Prairie Village, KS, for Respondents Land Air Express, Franklin Trucking;
Benita M. Seliga, Kansas City, MO, for Respondent Treasurer, State of Mo., Custodian of S.I.F.**

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD74821

Labor and Industrial Relations Commission

Before Division One: James M. Smart, Jr., P.J., Lisa White Hardwick and Gary D. Witt, JJ.

David Johnson worked as a dock worker at Land Air Express, Inc. While in the process of moving a pallet, Mr. Johnson strained his lower back. Mr. Johnson declined to see a doctor for evaluation, telling his supervisor he believed that he had simply aggravated an old injury. Seven months after the injury, Mr. Johnson sought treatment for his back. An MRI revealed a large disc herniation at the L5-S1 level, which is one level below Mr. Johnson's previous back injury. Mr. Johnson was referred to an orthopedic spine surgeon, who performed a dissection at the L5-S1 level. The surgeon informed Mr. Johnson after the surgery that he believed Mr. Johnson had suffered a new work-related injury.

Mr. Johnson subsequently quit his job at Land Air Express and filed two separate claims for workers' compensation. Land Air Express, and its insurer, denied all liability and provided no treatment for Mr. Johnson's claims. An Administrative Law Judge (ALJ) for the Division of Workmens' Compensation held a hardship hearing on both claims and issued two separate awards, finding: Mr. Johnson suffered a work-related specific injury, but did not suffer from an occupational disease. The ALJ issued a final award finding no compensability for the occupational disease claim, but that Land Air Express and its insurer were liable to Mr. Johnson for the costs of medical treatment and temporary total disability benefits continuing until such time as Mr. Johnson is able to compete for employment in the open labor market.

Land Air Express provided benefits to Mr. Johnson, as required by the ruling, but appealed the ALJ's decision to the Labor and Industrial Relations Commission. The Commission overturned the ALJ's decision on Mr. Johnson's specific injury and issued a final award denying all compensation and medical treatment liability to Mr. Johnson. The Commission found that the work incident was not the prevailing factor in causing Mr. Johnson's herniated disc and lower-back condition. Mr. Johnson appeals the Commission's reversal and authority to enter a final award.

AFFIRMED.

Division One holds: 1) The Commission had the authority to render a final order on appeal from the ALJ's issuance of a temporary award; and 2) the Commission's final award denying Mr. Johnson's claim for additional medical treatment and temporary total disability benefits was in fact a final award, regardless of any outstanding issues regarding medical costs.

1) The Commission will not review an ALJ's issuance of a temporary or partial award unless the employer has denied all liability for the payment of any compensation to the injured employee and asks for review as to whether the evidence supports a determination that there is liability under the Act. Land Air Express denied all liability for Mr. Johnson's injury. The Commission, therefore, had statutory authority to review Land Air Express's appeal, even though the ALJ issued a temporary award in Mr. Johnson's favor.

2) Chapter 287 and regulations promulgated by the Division pursuant to section 287.140 establish procedures which a medical provider must follow in order to pursue payment of the medical charges at issue in a workers' compensation case, regardless of whether the medical provider has a dispute with the employer/insurer or the employee. The statute and regulations anticipate the scenario at issue here: a final award may be issued by the Commission, yet medical providers (who provided care to a claimant on the assumption that the treatment would be paid by the workers' compensation insurer) might still be owed money for the services provided to a claimant. Regardless of whether the employer/insurer has authorized treatment of the claimant in the interim between the ALJ's decision and the Commission's final award, the regulations anticipate that medical providers may pursue either the employer/insurer or employee for fees for medical treatment that is found by award or settlement not to be compensable. A medical service provider may pursue the employee for the cost of the treatment provided in a separate claim with the Division or through other forms of litigation. Because Johnson's contentions regarding medical costs were not explicitly presented to the Commission and were not necessarily implicitly before the Commission, and because these issues involve parties who are not participants in this current proceeding (and are not indispensable to this proceeding), we need not remand this matter to address additional issues.

Opinion by James M. Smart, Jr., Judge

December 26, 2012

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